IN THE

SUPREME COURT

OF THE

UNITED STATES

C. S. Thompson, et al.,
Plaintiffs in Error.

vs.

The Los Angeles Farming and Milling Company,
Defendant in Error.

SUPPLEMENTAL BRIEF ON PART OF APPELLEE.

Since writing and filing the main brief, on the part of the appellee, the record herein has been served upon us, and the brief of Mr. Z. Montgomery, one of the counsel for plaintiffs in error, filed January 27, 1900, has just been brought to our attention.

Preliminarily, the defendant in error objects to the hearing of this cause, and asks that the same be remanded, because the plaintiffs in error have failed to comply with the provisions of Rule VIII of this

court, in this, to wit: That said plaintiffs in error have neglected to transmit a complete record, containing such exhibits and papers as are necessary to the hearing in this court. The omitted matter consists of maps referred to in the printed transcript of the record herein, as follows:

Map 10, page 62;
Map 14, (Exhibit 29), p. 106;
Map 9, (Exhibit 30), p. 134;
Map 2, p. 230;
Map 3, p. 230;
Map 8, (Exhibit 24), p. 231;
Map 5, (Exhibit 25), p. 231;
Map 7, (Exhibit 26), *Id.*;
Map 4, (Exhibit 27), *Id.*;
Map 1, (Exhibit 28), p. 232;
May 12, (Exhibit 22), p. 233;
Map 15, (Def'ts. Ex. 2), p. 258;
Map 6, (Def'ts. Ex. 3), p. 267;
Map 13, (Def'ts. Ex. 6), p. 270.

We were unable to make this objection in our original brief, as, at that time, we had not received a copy of the transcript of the record, and were not aware of appellants' neglect to file a complete record.

In Mr. Montgomery's brief it is contended that the patent issued to Eulogio de Celis, dated January 8, 1883, was not conclusive of the case, and that the court erred in refusing to permit the introduction of Celis' petition before the board of land commissioners, and that the court erred in refusing to allow the defendants in error to prove by the grant that de Celis did not claim the lands in question by virtue of any right or title derived from the Spanish or Mexican government. The authorities cited in the brief of defendant in error, pages 24-8, are sufficient to dispose of this entire contention; but in view of some of the propositions advanced by oppos-

ing counsel, we deem it proper to submit the following additional remarks:

In De Guyer *v.* Banning, 167 U. S. 740, the Supreme Court reiterated the doctrine announced in Beard *v.* Federy, 3 Wallace, 478, 491, and quoted with approval the doctrine announced by this court many years ago with reference to Mexican grants, viz: "If parties asserting interests in lands acquired since the acquisition of the country could deny and controvert this record (the patent) and compel the patentee in every suit for his land to establish the validity of his claim, the right to its confirmation and the correctness of the action of the tribunals and officers of the United States in the location of the same, the patent would fail to be as it was intended it should be, an instrument of quiet security to its possessor." And this court further recognized the efficacy of a number of the decisions cited on pages 24-5, of the brief already filed herein on behalf of the defendant in error. See particularly the views of the Supreme Court of California, approved by this court, 167 U. S. 742.

The following language of Mr. Justice Field, when sitting in the Supreme Court of California, in Moore *v.* Wilkinson, 13 Cal. 488, was likewise commended in the De Guyer case. It was there said: "The fifteenth section of the act of congress of 1851, provides that the final decree of confirmation and the patent shall be conclusive between the United States and the claimants only, and shall not affect the interests of third persons. If conclusive between the United States and the claimants, *it must be equally so between persons holding under either of those parties.*" In the present instance, the intruders who have brought this case here, profess to claim as citizens of the United States and under the government thereof. They are, therefore, absolutely concluded by the recitations of the patent and cannot

in any manner attack or controvert it. There is no decision, by either this court or the Supreme Court of California, to the purport that a patent of the United States issued upon a final decree of the board of land commissioners has been successfully assailed. In the De Guyer case, to which we have already made reference, this court approved the language of the Supreme Court of California in Leese *v.* Clark, 18 Cal. 535, and said: "The patent purports to convey the lands described in the survey, and its scope cannot be extended; *nor on the other hand, can it be limited by showing that the decree comprises a greater or less area than the survey*; nor can the claimant, after admitting—as he must—the conclusive effect of the patent, make out title to lands not conveyed by the patent, by the production of the proceedings which culminated in the patent. The patent, while it remains in force, conclusively determines what lands the claimant was entitled to under his claim and the decree of confirmation." It is unreasonable to claim that the government is not bound by its own patent, issued under the authority of an act of congress. A board was organized to determine whether the grant in question was valid, and it seems superfluous at this time to call attention to the oft-reiterated proposition that the government of the United States is bound by the recorded action of tribunals of its own making, vested with authority to pass upon the validity or invalidity of Mexican grants. As stated above there is not a solitary case where a patent of the United States, claimed to be based upon a Mexican grant, within the limits of California, has ever been disturbed, though efforts have sometimes been made in that direction. In this instance, the government makes no pretense; it does not seek to undo that which it deliberately accomplished by the issuance of a patent; nor to disturb purchasers in good faith

who have invested their fortunes, relying upon a solemn public record, authenticated by the president of the United States. The patent is set forth in the record, pages 42-63; and was issued by President Grant on the 8th day of January, 1873. The premises involved were set apart by judgment in partition [Tr. pp. 64 *et seq.*] to defendant's predecessors in interest, and possession was taken and asserted under that decree and was uniformly maintained. [Testimony of Van Nuys, Tr. pp. 125 *et seq.*; Lankershim, Tr. pp. 111-117, 121-2]. The deliberate intrusion of the plaintiffs in error upon lands in the peaceable possession of the defendant in error cannot be justified upon any theory; and the squatter invasion upon this cultivated and improved territory finds no justification in any decision of any court. While it is obvious that the entry of the plaintiffs in error was not warranted because of the fact that the title had already passed to the defendant in error, it is also established that had the defendant in error been possessed of no paper title, its actual peaceable possession should have been sufficient to prevent the entry in question, and is enough to justify the judgment. Outside of the proposition that the patent is conclusive, it is well settled that a peaceable possessor cannot be disturbed by one who, without title himself, merely aspires to ownership or occupancy. The maintenance of any other doctrine would be subversive of order and decent government.

Respectfully submitted.

STEPHEN M. WHITE,
JAMES H. SHANKLAND,
Solicitor for Appellee.

GRAVES, O'MELVENY & SHANKLAND,
of Counsel.